**THE HON'BLE MR JUSTICE B.PRAKASH RAO**

**And**

**THE HON'BLE MR JUSTICE M.VENKATESWARA REDDY**

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WRIT PETITION NO.26967 of 2003

29th January 2007

Between:

1. V.Vijaya Kumar Yadav (died).

And four others.

**…PETITIONERS**

AND

State of Andhra Pradesh, Rep.by its Mandal Revenue Officer, Golconda Mandal, Hyderabad District.

**…RESPONDENT**

**THE HON'BLE MR JUSTICE B.PRAKASH RAO**

**And**

**THE HON'BLE MR JUSTICE M.VENKATESWARA REDDY**

WRIT PETITION NO.26967 of 2003

**ORDER:** (Per the Hon'ble Mr Justice B.Prakash Rao)

Heard Sri P.Venugopal, learned counsel, appearing on behalf of the petitioners and the learned Government Pleader for Revenue appearing on behalf of the respondents.

The petitioners herein are the respondents before the Special Court under A.P.Land Grabbing (Prohibition) Act, 1982, Hyderabad, who, by way of a writ under Article 226 of the Constitution of India, seek to assail the order dated 30.10.2003 in L.G.C.No.46 of 1996 allowing an application filed by the respondent herein declaring the petitioners as land grabbers and to deliver possession to the respondent herein.

The facts, in brief, are that after filing of the application by the respondent that the subject matter, an extent of 245 square meters situated in Survey No.9/1 correlated in T.S.No.5, Block 'B', Ward No.80 of Khairatabad Village, Golkonda Mandal now Khairatabad Mandal, belongs to the State and the petitioners are the land grabbers. Therefore, the respondent herein sought possession and also for awarding compensation. It is also pointed out that, in fact, the said land is Shikam Talab Sarkari Hussain Sagar and yet, the petitioners herein have constructed house, which has come to their notice during the survey conducted and hence, the proceedings under the A.P.Land Grabbing (Prohibition) Act, 1982 ('the Act' for brevity) have been issued, which were not accepted by the petitioners. On verification thereof and even after the final orders passed in the said proceedings, the possession could not be taken. Hence, the application.

The petitioners herein contested the claim of the respondent. They raised several questions and pleas touching upon various aspects. However, normally, they restricted to one substantial plea to the effect that the land in their occupation was already declared by the State itself as a slum area under the provisions of the A.P.Slum Improvement Act and therefore, the provisions of the Act are not applicable nor any proceedings could be proceeded therewith. According to the petitioners, the said notification, which was marked as Ex.B3, was issued on 17.02.1983 whereas the present proceedings have been initiated in the year 1996 and hence, the same is not sustainable.

During the course of enquiry, both the sides let in their evidence. P.Ws.1 and 2 were examined and Exs.A1 to A11 were marked on behalf of the applicant/respondent herein. On behalf of the respondents/petitioners herein, R.W.1 was examined and Exs.B1 to 3 were marked. Considering the evidence and material on record, the Court below did not find favour with the petitioners' plea, especially, having regard to non-proving of the land claimed in the present application as slum area, allowed the application. Hence, this Writ Petition.

Sri P.Venugopal, learned counsel for the petitioners, submitted that having regard to the specific plea raised in regard to the declaration of the land in question as slum area, the respondents could not be initiated any proceedings nor the very provisions of the Act will have any application.

Learned Government Pleader sought to repel the contention on the ground that the petitioners themselves failed to prove that the land is slum area and no indulgence can be shown in their favour.

Having considered the submissions made on either side and on perusal of the material available on record, the point that arises for consideration is as to whether the petitioners can be declared as land grabbers in the present proceedings under the provisions of the Act.

There is no dispute at the outset in regard to the chequered events leading to filing of the present application and also the fact that the petitioners have raised several pleas but the same were given up restricting the objection only to the effect that the area has been declared as slum and therefore, proceedings could not be initiated against them. In support, the main reliance was sought to be placed on Ex.B3, which is a gazette notification issued under the provisions of the A.P.Slum Improvement Act. However, as rightly pointed out by the Court below, no doubt, absolutely there is no serious attempt on either side to specifically establish the very identity of the land, which is in question, in respect of which the present proceedings have been initiated and also the land, which has been declared as slum area under Ex.B3. No papers have been filed and no further details are forthcoming from either side. There is no serious dispute in regard to the issuance of Ex.B3 as such, however what exactly the land covered under Ex.B3 is also the question to be gone through and verify whether in respect of the very same land, the present proceedings have been initiated. Primarily, either way, it is the respondent herein, who would be in a position of the entire record, material reports etc., in respect of the proceedings initiated either for declaring land grabbers or slum area. Either of the proceedings is to be taken up after proper survey. In all the records, which have been filed by the respondent herein, there is no explanation coming forth on their behalf as to why such reports and all such declarations and the areas occupied by them, the land particulars etc., in respect of the slum declaration under the A.P.Slum Improvement Act has not been put forward. In the absence of any such material, it cannot be said that the land is one and the same or a different one. This aspect has not been properly considered by the Special Court, which could have easily solved the very basic identity of the land as claimed from both the sides. In view of the same, it is felt desirable that a re-enquiry should be done with an opportunity to both the sides to substantiate their case by producing appropriate and complete material in support thereof. It is needless to mention that once if it is the same land, which has already been declared as slum area, there is no serious dispute to the effect that the provisions of the Act would not have been in application in the present proceedings. However, in the event it is found that it is not a same area, unnecessarily the proceedings have its own logical end.

Subject to the above, the Writ Petition is allowed. The order dated 30.10.2003 in L.G.C.No.46 of 1996 is set aside and the matter is remitted to the Court below for disposal afresh in accordance with law after giving notice and opportunity to both the sides. It shall be open to both the sides to let in fresh evidence and other material, if they chose to do so. No costs.

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**(B.PRAKASH RAO, J)**

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**(M.VENKATESWARA REDDY, J)**

29th January 2007

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